

DEPARTMENT OF FOOD AND AGRICULTURE
PROPOSED CHANGES IN THE REGULATIONS

Title 3, California Code of Regulations

Division 4, Chapter 3, Entomology and Plant Quarantine,

Subchapter 2, Nursery Stock,

Subsection 3055.6(c), Fee Schedule

INITIAL STATEMENT OF REASONS/

POLICY STATEMENT OVERVIEW

Description of the Public Problem, Administrative Requirement, or Other Condition or Circumstance the Regulation is Intended to Address

This regulation is intended to address the obligations of the Secretary of the Department of Food and Agriculture to maintain registries for the certification of plants for pest freedom.

Specific Purpose and Factual Basis

The specific purpose of this regulation is to establish uniform fees for nematode certification program services that include inspections, sampling, testing, and special treatments.

The factual basis for the determination by the Department that adoption of this regulation is necessary is as follows:

Under existing law, the Secretary has established regulations for a voluntary nursery stock nematode certification program. These regulations provide the requirements and procedures for the certification of nursery stock for freedom from nematodes. These regulations established definitions, general provisions, participant responsibilities, eligibility, certification, and application and fees for the nursery stock nematode certification program. The regulations created a voluntary program for the certification of nursery stock for freedom from nematodes with program service costs paid by the participants.

After the emergency adoption of the nematode certification program regulations on an emergency basis, the Secretary established a fee schedule on August 17, 1994 for services provided to program participants. This fee schedule, set forth

in Subsection 3055.6(c), fixes uniform fees to be charged participants in this voluntary program for inspections and special treatments. Inspections include sampling and testing of samples. The current hourly rate fee of \$35.00 was calculated in 1994 using the formula provided in the State Administrative Manual. Departmental personnel no longer perform the program activities associated with this hourly rate. The California County Agricultural Commissioners now perform the program activities for which this hourly rate applies under contract with the Department. This hourly fee no longer represents the approximate cost for the service that is rendered by some California Agricultural Commissioners under contract with the Department.

The California Nursery Advisory Group (CNAG) reviewed the county nursery inspection contracts for the fiscal year 2001/2002 and determined that the current County Board of Supervisors adopted hourly rate ranges from approximately \$30 to \$75 with an average of approximately \$50 per hour. As a result, the CNAG recommended that the Secretary increase the hourly fee from \$35 to \$45. The members of CNAG include representatives of the agricultural commissioners and the affected nursery industry. The Secretary concurs with that recommendation and the Department proposes to increase the hourly fee up to a maximum of \$45. Those counties that have an adopted hourly rate that is less than \$45 would charge the lower rate under the contract terms with the Department.

Those nursery stock producers who directly benefit from and choose to participate in this program should pay a fee for the program services provided; therefore, it is necessary to amend Subsection 3055.6(c) to establish the hourly fee to be paid by participants in order to continue to approximate the costs of performing the nursery stock nematode certification program activities.

Estimated Cost or Savings to Public Agencies or Affected Private Individuals or Entities

The Department of Food and Agriculture has determined that the proposed amendment of Subsection 3055.6(c) does not impose a mandate on local agencies or school districts. The Department also has determined that no savings or increased costs to any State agency, no reimbursable costs or savings under Part 7 (commencing with Section 17500) of Division 4 of the Government Code to local agencies or school districts, no nondiscretionary costs or savings to local agencies or school districts, and no costs or savings in federal funding to the State will result from the proposed action.

The agency is not aware of any cost impacts that a representative private person or business would necessarily incur in

reasonable compliance with the proposed action.

The Department has determined that the proposed action will not have a significant adverse economic impact on housing costs or California businesses, including the ability of California businesses to compete with businesses in other states. The Department's determination that this action will not have a significant adverse economic impact on businesses was based on the following:

The adoption of Subsection 3055.6(c) establishes the fee schedule for services provided for the voluntary nursery stock nematode certification program. Only those who choose to participate in the program will pay a fee that covers the cost of the services provided. Because this certification should increase the value of the nursery stock, the cost paid by program participants should be offset by this increased value. The purchasers who elect to purchase this nematode certified stock might pay a higher cost that is offset by the value of nematode-free stock for healthy plantings.

Assessment

The Department has made an assessment that this amendment to the regulations would not (1) create or eliminate jobs within California, (2) create new business or eliminate existing businesses within California, or (3) affect the expansion of businesses currently doing business within California.

Alternatives Considered

The Department of Food and Agriculture must determine that no alternative considered would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

Information Relied Upon

The Department is relying upon the following information in proposing the amendment of Subsection 3055.6(c):

Internal Memorandum of May 19, 2003 to Stephen Brown from Umesh Kodira and its attachments, "County Nursery Inspection Contract, Funding and Cost Analysis – FY 2001/2002 and Minutes of the California Nursery Advisory Group Meeting held on January 16, 2003."

Member list of the California Nursery Advisory Group dated October 18, 2002.

